

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

SHARON K. SCHILL,	:	APPEAL NO. C-070881
	:	TRIAL NO. A-0706041
Plaintiff-Appellant,	:	
	:	JUDGMENT ENTRY.
vs.	:	
MARSHA P. RYAN, ADMINISTRATOR,	:	
OHIO BUREAU OF WORKERS'	:	
COMPENSATION,	:	
	:	
and	:	
BUSKEN BAKERY,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Sharon Schill filed a workers' compensation claim for an injury she allegedly sustained at her workplace, Busken Bakery. Her claim was denied. In July 2005, Schill simultaneously filed a notice of appeal and a petition. A year later, on July 11, 2006, Schill voluntarily dismissed her case under Civ.R. 41(A). On July 9, 2007, just less than a year later, Schill refiled the notice of appeal. On August 10, 2007, more than a year later, Schill refiled her petition.

Busken moved for judgment on the pleadings, asserting that because Schill failed to file her petition within a year after voluntarily dismissing her claim, she had failed to commence the action within a year in violation of the savings statute. The trial court granted the dismissal. Schill now appeals. We affirm.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

R.C. 4123.512 governs workers' compensation appeals. An appeal of an administrative decision in a workers' compensation claim gives a common pleas court jurisdiction to conduct a "new" trial.² R.C. 4123.512(A) states, "The filing of the notice of appeal with the court is the only act required to perfect the appeal."

When a workers' compensation claimant voluntarily dismisses a claim under Civ.R. 41(A), the savings statute (R.C. 2305.19) applies. The savings statute says that a plaintiff "may commence a new action within one year after the date" of dismissal. And R.C. 2305.17 provides that an action is commenced for the purposes of the savings statute by "filing a petition in the office of the clerk of the proper court together with a praecipe." A praecipe is no longer required to commence any action because that statutory requirement has been superseded by Civ.R. 3(A) and 4.

In *Robinson v. B.O.C. Group, General Motors Corp.*, the Ohio Supreme Court noted, "It seems reasonably clear that the General Assembly contemplated that the filing of the notice of appeal, not the complaint, commences the action."³ But Robinson, unlike the case at hand, did not involve the savings statute. "Commence" has a different meaning under the savings statute.

In *Fowee v. Hesley Hall, Inc.*,⁴ the Industrial Commission allowed the plaintiff's claim. The employer filed a notice of appeal; in response, the claimant filed a petition. The claimant later voluntarily dismissed her claim. The claimant did not file a new petition within a year of the voluntary dismissal. The court held that in an employer-initiated workers' compensation appeal, if the claimant fails to refile a

² *Zuljevic v. Midland-Ross Corp., Unitcast Division* (1980), 62 Ohio St.2d 116, 118, 403 N.E.2d 986.

³ 81 Ohio St.3d 361, 365, 1998-Ohio-432, 691 N.E.2d 667.

⁴ 108 Ohio St.3d 533, 2006-Ohio-1712, 844 N.E.2d 1193.

petition within a year after it has been voluntarily dismissed, the employer is entitled to judgment on its appeal.⁵

Schill argues that *Fowee* only applies to employer-initiated appeals. Not so. Although the case was about an employer-initiated appeal, there is nothing in *Fowee* to suggest that the court would have held differently in an employee-initiated appeal. Furthermore, the court stated, “[F]or the purposes of R.C. 2305.19, it is the filing of the petition (without which the substantive appeal cannot proceed), with the required notice to the relevant parties, that commences the action.”⁶

The supreme court has held that filing the petition commences the action. Because Schill failed to file her petition within the period allowed by the savings statute, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 6, 2008
per order of the Court _____.
Presiding Judge

⁵ Id.

⁶ Id. at ¶15.